

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** CNC FF

### **Introduction**

This matter dealt with an application by the tenant to cancel two Notices to End Tenancy for Cause as issued by the landlord.

The landlord and the tenant were both present at the hearing which was held via teleconference and each were afforded a full opportunity to present evidence. I also advised both parties that I would consider their oral testimony along with their written submissions which had been submitted prior to the hearing, in reaching my decision.

At the commencement of the hearing, the landlord requested an order of possession in the event that the tenant's application to cancel the notices was unsuccessful.

### **Issue(s) to be Decided**

- Are the notices to end tenancy as issued by the landlord valid, and if so, is the landlord entitled to an order of possession?

### **Background and Evidence**

The landlord relies upon two Notices to End Tenancy issued as follows:

- One Month Notice for Cause issued October 8, 2008 alleging that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk.

- One Month Notice for Cause issued October 9, 2008 alleging breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The evidence of the landlord at the hearing was that the material breaches alleged were as follows:

- failure to remove stored items from the garage area and from overhead pipes
- use of an air conditioning unit in the rental unit
- accessing the roof of the building and breaking the lock to do so
- having an extension cord running from the building to his truck parked at the rear of the building

The landlord also alleges that the use of the extension cord posed a significant risk to the building.

The landlord gave evidence that the tenant had been given written instructions to move several items stored in the garage, specifically those stored on overhead pipes. The written notice was given several months ago and it is only recently that the tenant has complied.

The landlord also states that the tenant was using an air conditioning unit and when notified that such use was a breach of the agreement, he denied he had one. The tenant has since ceased the use of the unit, most likely due to the seasonal change of weather.

The landlord alleges that the tenant was on the roof of the building and that he had broken the lock to gain access. The landlord was unable to provide any direct evidence of who actually broke the lock, other than to allege that the tenant did.

The extension cord was discovered by the landlord running from an outdoor socket to a timer in the tenant's truck. The landlord removed the extension cord immediately upon its discovery, and as such there was no action required by the tenant.

The evidence of the tenant in regards to the material breach notice is that he has complied with moving his items although he admits it take some time. He states that it was common practice for the past three years for tenants to store items in that manner and that the landlord also stored items there as well.

In regards to the use of the air conditioner, the tenant admits he used it, but that he was unaware that he was not allowed to. He states that he has ceased its use.

In regards to the roof access, the tenant states that he did not break the lock and that he had been allowed access by the previous resident manager who told him to just push on the door as the lock was broken.

The extension cord, the tenant states, was for a timer for the glow plug in his truck and that he had the permission of the tenant where the cord was plugged in.

The landlord's evidence also relates to disturbances by the tenant to other tenants in the building. The resident manager testified that his apartment was adjacent to the tenants and that he has on several occasions heard "video game sounds" coming from the rental unit. He also states that he has on occasions heard television noises during late hours coming from the tenant's unit. The landlord also referred to complaints received from other tenants, but had not submitted any details of those complaints in evidence.

The tenant's evidence regarding noise is that he has video games and that he knows of only one occasion when he was watching TV that he may have been loud. The tenant states that he has a disability which causes him on occasion to drop things or to fall. He states that he takes great measures to be quiet including wearing soft soled shoes as he feels that the tenant below him is hyper-sensitive to noise.

The tenant at the hearing also raised concern that he was only recently provided details of the landlord's complaints despite his early request for the material. The tenant also

feels that he has not been able to prepare a proper defence as the landlord has not disclosed alleged complaints from other tenants.

### **Analysis**

In considering the evidence, I note that the burden of proof in this matter lies with the landlord to prove that the allegations are correct and that they are worthy of issuing an order of possession.

In reviewing the evidence in regards to the material breaches alleged by the landlord, I find that the tenant has complied with the requests to correct the breaches, although a bit tardy. In addition, I do not find that the issue of the storage and the extension cord to be breaches of a material nature. The issue of the use of the air conditioner is a material breach but I find that the tenant has corrected the use of the air conditioner, even though it may indeed be due to climatic conditions. The tenant's continued use in the future may indeed meet the test of a material breach.

The landlord's allegation in regards to the tenant breaking the lock to gain access to the roof is entirely speculative and there was no evidence before me to support such an accusation. I further find the landlord's assertion that the use of the extension cord has put the landlord's property "at significant risk" has not been proven. The simple use of an extension cord without some corroborating evidence as to the risk involved does not meet the test required.

In relation to the allegation of "unreasonably disturbed another tenant or landlord", I find that the evidence presented by the landlord to be scant at best. The resident manager testified about noise in broad terms and was able to provide wide time periods, but with no specific dates or evidence of the degree of the noise. If the noise was so significant that the resident manager could hear it from his unit and in the hallway, there is no

evidence that he took measures to contact the tenant immediately to ascertain the nature of the noise and to notify him to cease.

I also find that the failure of the landlord to provide the tenant with the particulars of the other alleged complaints from other tenants has not allowed the tenant to be properly able to respond and to prepare a defence. The specific dates and nature of the complaints are in the possession of the landlord, but they have failed to submit them as evidence or provide them to the tenant.

I find that the landlord has failed to meet the test of proving their allegations of unreasonable disturbance by the tenant.

### **Conclusion**

In summary, I find that the landlord has failed to meet the standard of proof required to prove the allegations contained in the Notices to End Tenancy, and I therefore cancel both of the notices and order that the tenancy will continue.

I find that the tenant is entitled to recover the filing fee of \$50.00 and order that the tenant may deduct that amount from the next month's rent.

Dated: November 14, 2008

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Dispute Resolution Officer

